

### **REMARKS**

Applicant notes that the Examiner has allowed claims 19-21. Claim 1, 4, 7, 9 and 10 have been rejected on the grounds of obviousness double patenting in view of U.S. Patent Number 6,973,872. Applicant has filed a terminal disclaimer with respect to '872 patent. Therefore, this objection has been overcome.

Applicant traverses the rejection of claims 1, 7, 9 and 10 under 35 U.S.C. 102(b) as being anticipated by Johnson U.S. Patent Number 1,728,064 and the rejection of claims 2 and 3 under 35 USC 103(a) as being obvious and unpatentable over Johnson '064 in view of Ellner U.S. Patent Number 5,601,012; claims 4-6 under 35 USC 103(a) over Johnson '064 when combined with Savage U.S. Patent Number 5,400,698 and claim 8 as being obvious and unpatentable over Johnson '064 in view of Wheaton U.S. Patent Number 3,831,507. Claims 11 and 15-18 have been rejected under 35 USC 103(a) as being unpatentable over Johnson '064 when combined with Savage '352 and Bassett U.S. Patent Number 1,596,331.

Johnson '064 is directed towards a baking mold which shows in Figures 4 and 7 the baking of multiple units. The device uses crimped pans or plates. The device has two hinged frames, one holding plates which are carried by the plate frame and the other frame holding dishes so that the plate frame can be folded down on the dish frame to provided for correct positioning. Thus, one plate forms the outer surface of the mold and the dish forms the inner surface of the mold to create a pastry shell to hold a later added filling. Spurs 18 provide the perforation of the top layer of dough for the escape of steam generated in baking. It is constructed differently and functions differently from the claimed device. This reference does not anticipate or obviate the presently claimed

invention.

Ellner '012 is directed towards a bread baking assembly formed with a supporting wireframe which holds the bread bowls up and away from each other from the base of the oven.. The individual bowls are secured to an encircling framework or band and a separating beam. As noted on Col. 8, lns. 27-30, the framework is attached to each bread bowl at the two points along their widened portion. There is no teaching of inner and outer bowls, use of removable cover or a fluted insert, nor the ability to removably mount one to another to bake material into a predetermined shape. As noted, the framework provides the same function as a conveyor belt or a perforated tube.

Savage '698 discloses two nesting planar sheets with a plurality of hemispherical shaped projections formed therein depending downwardly therefrom. Corner pins 415 secured to the bottom of the top sheet in the center and corners of the top sheet are inserted into holes formed in the respective areas of the bottom sheet. The sheets are held together by spring clamps placed over opposing sides of the two sheets when stacked together. Thus, orientations in Savage '698 requires placement of the respective corner and center pins of the top sheet in the center and corner holes of the lower sheet. It should be noted that any bending of the pins or the planar sheet in the normal storage of the mold will result in it not being able to be nested together as the close tolerance required for fittings will result in misalignment . Further, the sheets are difficult to separate after baking due to the pins holding the planar sheets together. This reference cannot be combined with Johnson '064 and Bassett '331 to teach or arrive at the present invention.

Bassett '331 simply is directed toward a pie tin having an outer pan with an outer flange and planar lower surface and an inner perforated mold pan having a downwardly turned flange around its outer periphery which fits over the flange of the outer pan and outwardly extending opposing

handles. Pivoting clamping members are hinged at opposite points on the flange allowing locking of the mold member to the pie tin. Although the horizontal bottom of the inner pan of Bassett does contain holes to allow for the venting of moisture, these holes would allow cake batter to escape through those holes as cake batter is much more fluid than cake dough.

Independent claims 1 and 11 as amended should be allowed over Bassett '331 when combined with Johnson'064 in view of Savage '352 as the same cannot be combined for the reasons previously noted. Although Bassett design does feature multiple throughgoing apertures for venting of excess moisture, such apertures would be suitable only for pie dough due to the greatly increased viscosity of cake batter, as such apertures would fail to contain the much more fluid cake batter which cause failure of the intended molding action of the above parallel surface. The Bassett perforated planar skirt is in immediate contact with the uncooked pie dough whereas the perforated skirt of the present invention is designed to be suspended above the batter so as to allow skirt to become heated before batter rises to contact skirt. By being preheated, the heated perforated skirt cauterizes the surface of the batter preventing it from escaping through the perforations, while still allowing the escape of excess moisture through the cauterized surface of the dough through the perforations. The present invention accomplishes venting of excess moisture created during the baking process of cakes without allowing uncooked batter to exit the mold.

Wheaton '507 is noted for its limited use of a fluted insert but is not applicable to claims 8 and 12 which depends to amended claims 1 and 11.

In U.S. patent law, it is well settled that for there to be anticipation under 35 U.S.C.102. "each and every element" of the claimed invention must be found either expressly or inherently described in a single prior art reference. *Verdegaal Bros. Inc. v. Union Oil Co. of Cal.*, 814 F.2d 1565, 1571; 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1986) and references cited therein. See also, *Kloster*

*Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 1571; 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986) ("absence from the reference of any claimed element negates anticipation."); *In re Schreiber*, 128 F.3d 1473, 1477; 44 U.S.P.Q.2d 1429, 1431 (Fed.Cir. 1997). To constitute an anticipatory reference, the prior art reference must contain an enabling disclosure. *Chester v. Miller*, 906 F.2d 1574, 1576 n.2, 15 U.S.P.Q.2d 1333, 1336 n.2 (Fed. Cir. 1990), see also *Titanium Metals Corp. v Banner*, 778 F.2d 775, 181, 227 U.S.P.Q. 773, 778 (Fed. Cir.1985). A reference contains an enabling disclosure when a person of ordinary skill in the art could have combined the description of the invention in the reference with his knowledge of the art to have placed himself, and thus the public, in possession of the invention. *In re Donohue*, 766 F.2d 531, 533, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985); *In re Sheppard*, 339 F.2d 238, 242, 144 U.S.P.Q. 42, 45 (C.C.P.A. 1964).

In cases which are similar to the present circumstances, the courts have ruled that beyond looking at the prior art to determine if it suggests doing what the inventor has done, one must consider if the prior art provides an expectation of succeeding in the endeavor. *In re Dow Chem.*, 837 F.2d 469, 473, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), "Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *Id.* As noted by the court in the case of *In re Clinton*, "Obviousness does not require absolute predictability, but a reasonable expectation of success is necessary." *In re Clinton*, 527 F.2d 1226, 1228, 188 U.S.P.Q. 365, 367 (C.C.P.A.1976).

In respect to the obviousness 35 USC 103(a) rejection, as noted by the Court in the case of *In re Gordon*, the mere fact that a prior art reference could be modified to achieve the claimed invention does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir.1984); see also *In re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), and *Ex parte*

*Levengood*, 28 U.S.P.Q.2d 1300, 1302 (Bd. Pat. App. & Int. 1993). Applicants respectfully submit that nowhere in the art of, record is there any suggestion to arrive at the claimed structure of the present invention.

None of the cited references singularly or in combination anticipate teach or obviate the presently claimed invention.

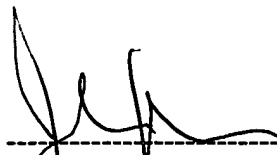
A terminal disclaimer has been filed with this Amendment to overcome the obviousness-type double patenting rejection with respect to U.S. Patent Number 6,973,872. A one month extension of time together with fee has been filed with this amendment.

If any additional charges are required, please charge Deposit Account Number 07-1340.

It is respectfully requested that the arguments and amendments present in the present application in condition for favorable reexamination and that the application be passed to issue.

Respectfully submitted,

GIPPLE & HALE

A handwritten signature in black ink, appearing to read 'John S. Hale', is written over a horizontal dashed line.

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